

9 FAM 42.32(C) NOTES EMPLOYMENT-BASED THIRD PREFERENCE IMMIGRANTS

(CT:VISA-680; 01-28-2005)

(Office of Origin: CA/VO/L/R)

9 FAM 42.32(C) N1 DEFINING "SKILLED WORKER"

(CT:VISA-680; 01-28-2005)

The Department of Homeland Security (DHS) regulations define a "skilled worker" as one who, at the time of petitioning, is capable of performing skilled labor, requiring at least two years training or experience, not of a temporary or seasonal nature, and for which there are no qualified workers available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.

9 FAM 42.32(C) N2 DEFINING "PROFESSION"

(CT:VISA-680; 01-28-2005)

INA 101(a)(32) defines "profession" as including, "but not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." *DHS* has also held that an occupation may generally be considered to be a "profession" within the meaning of INA 101(a)(32) if the attainment of a baccalaureate degree is usually the minimum requirement for entry into that occupation.

9 FAM 42.32(C) N3 DEFINING "OTHER WORKER"

(CT:VISA-680; 01-28-2005)

DHS regulations define "other worker" to mean a qualified alien capable, at the time of petitioning, of performing unskilled labor, requiring less than two

years training, not of a temporary or seasonal nature, and for which there are no qualified workers available in the United States.

9 FAM 42.32(C) N4 LABOR CERTIFICATION/PETITION REQUIREMENT

(TL:VISA-54; 2-28-92)

The consular officer shall not issue an immigrant visa to any third preference employment-based immigrant until the consular officer is in receipt of an approved petition accompanied by a labor certification granted by the Department of Labor, evidence that the alien's occupation is on the Department of Labor's Schedule A or evidence to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program.

9 FAM 42.32(C) N5 SIGNIFICANCE OF APPROVED PREFERENCE PETITION

(CT:VISA-680; 01-28-2005)

A certification under INA 212(a)(5)(A) is included in the approval of the preference petition. The *Department of Homeland Security* is responsible for determining the eligibility of an alien for preference immigrant status. Consular officers shall not readjudicate the petition, but rather shall review the petition to determine whether:

- (1) The supporting evidence is consistent with the approval;
- (2) There was any misrepresentation of a material fact; and
- (3) The alien meets the requirements of the employment offered.

9 FAM 42.32(C) N6 SPOUSE AND CHILDREN

(TL:VISA-54; 2-28-92)

The spouse, or the child of a marriage which existed at the time of the principal alien's admission into the United States, is entitled to derivative status and may accompany or follow to join the principal applicant. A spouse or child acquired subsequent to the principal alien's admission is not entitled to derivative status.